

# Order

**Michigan Supreme Court  
Lansing, Michigan**

September 23, 2008

Clifford W. Taylor,  
Chief Justice

ADM File No. 2007-40

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendment of  
Rule 7.205 of the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering two alternative amendments of Rule 7.205 of the Michigan Court Rules. Before determining whether either of the proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of either proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

## **ALTERNATIVE A**

### Rule 7.205 Application for Leave to Appeal

(A)-(E) [Unchanged.]

(F) Late Appeal.

(1)-(2) [Unchanged.]

(3) Except as provided in subrule (F)(4), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

(a) [Unchanged.]

(b) entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period, then the 12 months are counted from the entry of the order deciding the motion.

- (c) The 12-month limitation period provided in subrule (F)(3) is tolled for the period when an appeal is pending pursuant to a claim of appeal.

(4)-(5)[Unchanged.]

(G) [Unchanged.]

### **ALTERNATIVE B**

#### Rule 7.205 Application for Leave to Appeal

(A)-(E) [Unchanged.]

(F) Late Appeal.

(1)-(2) [Unchanged.]

- (3) Except as provided in subrule (F)(4), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

(a) [Unchanged.]

- (b) entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period, then the 12 months are counted from the entry of the order deciding the motion.

- (c) The 12-month limitation period provided in subrule (F)(3) is not tolled for the period when an appeal is pending pursuant to a claim of appeal, except as otherwise allowed by this rule.

(4)-(5)[Unchanged.]

(G) [Unchanged.]

Staff Comment: Alternative A would adopt the principle that the period in which to file an application for delayed appeal pursuant to MCR 7.205(F) is tolled while a claim of appeal is pending.

Alternative B would clarify that the period in which to file an application for delayed appeal pursuant to MCR 7.205(F) is not tolled while a claim of appeal is pending, except as allowed by the rule.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2009, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2007-40. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 23, 2008

*Corbin R. Davis*  
Clerk